

Clarification of Recent Press Release on Tokenization and Cloud Computing

(The U.S. Department of State, Directorate of Defense Trade Controls (DDTC) is issuing the following clarification in response to recent postings on the Perspecsys, Inc. website regarding an advisory opinion on the secure transfer of technical data via the internet. In their postings, Perspecsys made claims that DDTC has deemed misleading. DDTC has requested that Perspecsys post the following correction on their site.)

On May 27, 2014, the Department of State issued a non-binding advisory opinion regarding whether tokenization may be used to secure International Traffic in Arms Regulations (ITAR)-controlled technical data. The advisory opinion stated that,

“In accordance with [ITAR] § 125.4(b)(9), tokenization may be used to process controlled technical data using cloud computing applications without a license even if the cloud computing provider moved tokenized data to servers located outside the U.S., *provided sufficient means are taken to ensure the technical data may only be received and used by U.S. persons* who are employees of the U.S. government or are directly employed by a U.S. corporation and not by a foreign subsidiary throughout all phases of the transfer, including but not limited to transmission, storage, and receipt. Inclusions of transfers to foreign persons would require the appropriate authorization from the Directorate of Defense Trade Controls.

“Additionally, in all cases the technical data must be sent by a U.S. person who is an employee of a U.S. corporation or a U.S. government agency. Transmission of classified information through this means if sent or taken outside of the United States must be accomplished in accordance with the requirements of the Department of Defense National Industrial Security Program Operating Manual.”

Based on recent press releases and other statements published on social media that go well beyond the advisory opinion, the Department is providing the following clarification. The advisory opinion is not intended to imply that “sufficient means” to accomplish the requisite assurance levels exists today technologically, nor does it suggest that tokenization by itself could achieve that end. Additionally, the advisory opinion clearly stated that the use of cloud computing applications, even if through tokenization, was limited to receipt and use of unclassified technical data by U.S. persons who are employees of the U.S. government or directly employed by a U.S. corporation. Any transfer to a foreign person would require a separate authorization.

Finally, the Department wishes to draw your attention to section 126.9 of the ITAR. Advisory opinions are issued at the request of exporters or their legal representatives to address specific questions regarding interpretation of the ITAR and are not intended as general guidance, nor do they constitute a precedent which may be applied in future matters before the Department. Furthermore, the Department does not in any way endorse a particular company, brand, or

product. ITAR exemptions are self-executing and each exporter must confirm compliance with all terms of the applicable exemption.